

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHELLE COLUMBUS,

Plaintiff-Appellant,

v

THOMAS L. MOORE, d/b/a SOUTHERN  
MICHIGAN PAINT & QUARTER HORSE  
AUCTION COMPANY, and J. R. COVELL,

Defendants-Appellees.

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UNPUBLISHED

July 27, 2006

No. 267957

Ingham Circuit Court

LC No. 04-001440-NO

Before: Neff, P.J., and Bandstra and Zahra, JJ.

NEFF, P.J. (*dissenting*).

I respectfully dissent. Given the evidence, plaintiff established a genuine issue of material fact regarding whether the circumstances of her case fall within the Equine Activity Liability Act (EALA), MCL 691.1661 *et seq.* I would reverse the grant of summary disposition in favor of defendants.

In this case, there is a triable issue of fact whether plaintiff was a spectator. Plaintiff testified that she was not involved in the horse show and that she was talking to friends when she was kicked by defendant J. R. Covell's horse. There is no dispute that plaintiff, and spectators in general, were permitted in the area where she was standing. Witnesses, including defendant Thomas Moore, the proprietor of the show, and Covell, testified that guests at the show were allowed in the area where plaintiff was standing. Plaintiff thus was not in an unauthorized area. There is also no dispute that plaintiff had no direct participation in the equine activities. As plaintiff notes, even defendant Moore referred to plaintiff as a "spectator" in his deposition testimony.

The majority relies on the ordinary meaning of "spectator," defined as "1. One who attends and views a show, sports event, or the like. 2. An observer of an event; eyewitness; onlooker." Majority, *ante* at p 3. Given the plain meaning of the term "spectator," and viewing the evidence in a light most favorable to plaintiff, the question whether plaintiff was "spectating at an equine activity" should be submitted to the trier of fact. I would conclude that the trial court erred in deciding as a matter of law that based on plaintiff's activity, she was a "participant" in the horse show, and not a "spectator."

/s/ Janet T. Neff